APPENDIX

The Seventh Amendment to the Constitution of the United States reads as follows:

> "(Trial by jury in civil cases.)—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

Rules 12(b), 38 and 39(a) of the Rules of Civil Procedure for district courts read as follows:

> "12(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted." • • • (The remainder does not appear to be pertinent.)
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> "38. Jury trial of right.—(a) Right preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.
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> "(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing

at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

"(c) Same; specification of issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

"(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties."

"39. Trial by jury or by the court.—(a) By jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States."

Article 2, Section 23 of the Arizona Constitution reads as follows:

"23. (Trial by jury.)—The right of trial by jury shall remain inviolate, but provision may be made by law for a jury of a number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of a jury in civil cases where the consent of the parties interested is given thereto."

Article XVIII, Section 8, Arizona Constitution, reads:

"Section 8. (Workmen's compensation.)—The legislature shall enact a Workmen's Compensation Law applicable to workmen engaged in manual or mechanical labor in all public employment whether of the state, or any political subdivision or municipality thereof as may be defined by law and in such private employments as the legislature may prescribe by which compensation shall be required to be paid to any such workman, in case of his injury and to his dependents, as defined by law, in case of his death, by his employer, if in the course of such employment personal injury to or death of any such workman from any accident arising out of, and in the course of, such employment, is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its agents or employee or employees, to exercise due care, or to comply with any law affecting such employment; provided that it shall be optional with any employee engaged in any such private employment to settle for such compensation, or to retain the right to sue said employer as provided by this constitution; and, provided further, in order to assure and make certain a just and humane compensation law in the State of Arizona, for the relief and protection of such workmen,

their widows, children or dependents, as defined by law, from the burdensome, expensive and litigious remedies for injuries to or death of such workmen, now existing in the state of Arizona, and producing uncertain and unequal compensation therefor, such employee, engaged in such private employment, may exercise the option to settle for compensation by failing to reject the provisions of such Workmen's Compensation Law prior to the injury.

"The percentages and amounts of compensation provided in House Bill No. 227 enacted by the seventh legislature of the state of Arizona, shall never be reduced nor any industry included within the provision of said House Bill No. 227 eliminated except by initiated or referred measure as provided by this constitution."

The following references are to Arizona Code Annotated, 1939:

Section 56-904, so far as pertinent, reads:

"The commission may adopt rules of procedure, rules for the fixing of rates, for the presenting of claims, and such other rules and regulations as are necessary for its business, and change the same from time to time. It may, in its name, sue and be sued in all actions or proceedings arising out of or relating to the state compensation fund."

Section 56-907, so far as pertinent, reads:

"The commission shall have full power, jurisdiction and authority to administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law, where such duty is not now specifically delegated to any other board or officer, * * *".

Section 56-928 reads:

"56-928. Employers subject to law.—(a) Employers subject to the provisions of this article are: 1. the state, 2. each county, city, town, municipal corporation, and school district, and, 3. every person who has in his employ three (3) or more workmen or operatives regularly employed in the same business or establishment, under contract of hire, except agricultural workers not employed in the use of machinery, and domestic servants; but exempted employers of agricultural workers or domestic servants, or employers of less than three (3) workmen or operatives, may come under the provisions of this article by complying with its provisions and the rules and regulations of the commission. For the purposes of this section 'regularly employed' includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession, or occupation of an employer.

"(b) When an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractors and the persons employed by him, and his subcontractor, and persons employed by the subcontractor, are within the meaning of this section, employees of the original employer.

"(c) A person engaged in work for another, and who while so engaged is independent of the employer in the execution of the work, not subject to the rule or control of the person for whom the work is done, but is engaged only in the performance of a definite job, or piece of work, and subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor, and an employer

within the meaning of this section. (Laws 1925, ch. 83, sec. 44, p. 345; rev., R.C. 1928, sec. 1418; Laws 1945, ch. 33, sec. 1, p. 65.)"

Section 56-930, so far as pertinent, reads:

"'Order' shall mean and include any rule, regulation, direction, requirement, standard, determination or decision of the commission; • • •

"'Compensation' shall mean the compensation and benefits provided herein;

"'Award' shall mean the finding or decision of the commission of the amount of compensation or benefit due an injured or the dependents of a deceased employee."

Section 56-944 reads:

"56-944. Option of employees engaged in hazardous occupations—Notice by employer and employee—Effect of failure to give.—Employers who comply with the provisions of section 1422 (56-932) shall not be liable to respond in damages at common law or by statute, except as hereinafter provided, for injury or death of an employee wherever occurring, provided however, that it shall be optional with employees to accept compensation as provided herein or to reject the provisions hereof and retain the right to sue said employer as provided by law. Such election to reject the terms of this article shall be made by a notice in writing, signed and dated, given by an employee to his employer, in duplicate, in substantially the following form: 'To (name of employer): You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of the law for the payment of compensation, as provided by the compulsory compensation law of the state of Arizona, and acts amend-

atory thereto.' Such notice must be filed with the employer prior to injuries sustained by such employee, and thereafter, and within five (5) days, the employer must file with the commission the duplicate of such notice so served by such employee. All employees shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions hereof, unless said notice in writing has been served by the said employee upon his employer prior to injury.

"Every employer of employees engaged in occupations as designated herein shall post and keep posted in a conspicuous place upon his premises, in all languages spoken by his employees and available for inspection by all workmen, a notice in substantially the following form: 'All employees are hereby notified that in the event they do not specifically reject the provisions of the compulsory compensation law they are deemed by the laws of Arizona to have accepted the provisions of such law, and to have elected to accept compensation under the terms of said law, and that under the terms thereof employees have the right to reject the same by written notice thereof prior to any injury sustained, and that blanks and forms for such notice are available to all employees at the office of this company.'

"If an employer fails to post and keep posted said notice as required or fails to keep available at the place where laborers are hired, the blank forms of notice herein provided for to be signed by workmen, no employee who shall thereafter engage in employment for such employer, during the time that such notices shall not be posted or during the time that such blanks are not available, shall be deemed to have accepted the provisions of this article and it shall be optional for such employee, if injured during said pe-

riod when blanks were not available or such notice was not posted, to accept compensation hereunder or maintain other action against the employer. (Laws 1925, ch. 83, 60, p. 345; rev., R.C. 1928, 1430.)"

Section 56-945 reads:

"56-945. Notice of authorization to be posted by employers electing to pay direct compensation.—Each employer providing insurance or electing directly to pay compensation, as herein provided, shall post in conspicuous places about his place of business typewritten or printed notices stating that he has complied with the provisions of this article and of all of the rules and regulations of the commission made in pursuance thereof and has been authorized by the commission directly to compensate such employees or dependents, and the same, when so posted, shall constitute sufficient notice to his employees of the fact that he has complied with the law as to securing compensation to his employees and their dependents. (Laws 1925, ch. 83, 61, p. 345; rev., R.C. 1928, 1431.)"

Section 56-946, reads:

"56-946. Compensation exclusive remedy—Exceptions.—The right to recover compensation pursuant to the provisions of this article for injuries sustained by an employee shall be the exclusive remedy against the employer, except as provided in the two preceding sections, and except where the injury is caused by the employer's wilful misconduct and such act causing such injury is the personal act of the employer himself, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an elective officer thereof, and such act indicates a wilful disregard of the life, limb, or bodily safety of employees, such injured employee may, at his option,

either claim compensation or maintain an action at law for damages. The term 'wilful misconduct' as employed in this section shall be construed to mean an act done knowingly and purposely with the direct object of injuring another. (Laws 1925, ch. 83, sec. 65, p. 345; rev., R.C. 1928, sec. 1432.)"

Section 56-949, reads:

"56-949. Liability of third person to injured employee.—If an employee entitled to compensation hereunder is injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall elect whether to take compensation under this title or to pursue his remedy against such other. If he elect to take compensation, the cause of action against such other shall be assigned to the state for the benefit of the compensation fund, or to the person liable for the payment thereof, and if he elect to proceed against such other, the compensation fund or person, shall contribute only the deficiency between the amount actually collected and the compensation provided or estimated herein for such case. Compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for herein shall be made only with the written approval of the commission, or of the person liable to pay the same. (Laws 1925, ch. 83, Sec. 66, p. 345; rev., R.C. 1928, sec. 1435.)"

Section 56-950, reads:

"56-950. Election of remedy—Waiver.—Every employee, or his legal representative in case death results, who makes application for an award, or with the consent of the commission accepts compensation from an employer, waives any right to exercise any

option to institute procedings in any court. Every employee or his legal representative in case death results, who exercises any option to institute proceedings in court waives any right to any award or direct payment of compensation from his employer. (Laws 1925, ch. 83, sec. 67, p. 345; R.C. 1928, sec. 1436.)"

Section 56-967 reads:

"56-967. Application for compensation or for increase—Time limit.—An employee entitled to compensation shall file with the commission his application therefor together with the certificate of the physician who attended him. The physician shall inform the injured employee of his rights under this article and shall lend all necessary assistance in making the application for compensation and such proof as required by the rules of the commission, without charge. Where death results from the injury, the parties entitled to compensation, or some one in their behalf, shall make application for the same to the commission, accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation, certificate of attending physician, if any, and such other proof as required by the rules of the commission. Like application shall be made for an increase or rearrangement of compensation. No increase or rearrangement shall be operative for any period prior to application therefor, and any such increase or rearrangement shall be within the limits and classifications provided herein. No application shall be valid or claim thereunder enforceable unless filed within one (1) year after the day upon which the injury occurred or the right thereto accrued. (Laws 1925, ch. 83, 80, p. 345; rev., R. C. 1928, 1447.)"

Section 56-971 reads:

"56-971. No injunction to issue—Exception.—No injunction shall issue suspending or restraining any order, award, classification, or rate adopted by the commission, or any action of any officer required by the provisions hereof, except as herein provided; but nothing herein shall affect any defense to an action brought by the commission or the state in pursuance of the authority contained herein. (Laws 1925, ch. 83, sec. 88, p. 345; rev., R. C. 1928, sec. 1451.)"

Section 56-972 reads:

"56-972. Appeal to Supreme Court.—Within thirty (30) days after the application for a rehearing is denied, or if the application is granted within thirty (30) days after the rendition of the decision on the rehearing, any party affected thereby may apply to the Supreme Court of the state for a writ of certiorari to review the lawfulness of the award. Such writ shall be made returnable within thirty (30) days, and shall direct the commission to certify its record, proceedings and the evidence to the court. On the return day the cause shall be heard in the court unless for good cause continued, and shall be heard on the record of the commission as certified by it. The review shall be limited to determining whether or not the commission acted without or in excess of its power; and, if findings of fact were made, whether or not such findings of fact support the award under review. If necessary the court may review the evidence.

"The commission and each party to the proceeding before the commission may appear in the review. The court shall enter judgment either affirming or setting aside the award. The rules of civil procedure relating to certiorari shall, so far as applicable, and not in conflict herewith apply. (Laws 1925, ch. 83, sec. 90, p. 345; rev., R. C. 1928, sec. 1452.)"